

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN TOUCH CONCEPTS, INC., d/b/a ZCOM,

Plaintiff,

-against-

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS, et. al.,

Defendants

Docket No. 13 Civ. 1419 (PKC)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on a date to be determined by the United States District Judge Hon. P. Kevin Castel, In Touch Concepts, Inc., d/b/a Zcom shall move before Judge Castel at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12C, New York, NY 10007, for an Order:

- i. Pursuant to 28 U.S.C. 455(a), disqualifying Hon. P. Kevin Castel from the instant matter upon the grounds that “his impartiality might reasonably be questioned;”
- ii. Vacating Orders tainted by the appearance, or even perceived appearance of partiality, to wit: Order of June 4, 2013 (D.E. 87); Order of November 18, 2013 (D.E. 93); Order of November 20, 2013 (D.E. 97); Order of November 27, 2013 (D.E. 100); Order of December 2, 2013 (D.E. 103); Order of December 3, 2014 (D.E. 104); and, the discovery provisions of the Order of January 2, 2014 (D.E. 110);

iii. Pursuant to 28 U.S.C. § 1367, declining supplemental jurisdiction over Zcom's claims and remanding them back to the Supreme Court of the State of New York, New York County;

iv. Pursuant to Rule 16 of the Local Rules for the Division of Business Among District Judges, randomly reassigning Cellco Partnership's declaratory judgment action to a different United States District Judge in and For the Southern District of New York.

Or, in the alternative, it is respectfully submitted that an Order should issue:

i. Pursuant to 28 U.S.C. 455(a), disqualifying Hon. P. Kevin Castel from the instant matter upon the grounds that "his impartiality might reasonably be questioned;"

ii. Vacating Orders tainted by the appearance, or even perceived appearance, of partiality, to wit: Order of June 4, 2013 (D.E. 87); Order of November 18, 2013 (D.E. 93); Order of November 20, 2013 (D.E. 97); Order of December 3, 2014 (D.E. 104); and, the discovery provisions of the Order of January 2, 2014 (D.E. 110);

iii. Substituting an Order pursuant to Fed. R. Civ. P. 15(a)(2) granting Zcom leave to interpose a Second Amended Complaint, without a page limitation, in the place and stead of the Order of November 20, 2013 (D.E. 97);

iv. Pursuant to Rule 16 of the Local Rules for the Division of Business Among District Judges, randomly reassigning the consolidated matters to a different United States District Judge in and For the Southern District of New York.

And, in any event, for such other and further relief favorable to In Touch Concepts, Inc., d/b/a Zcom as the Honorable Court may find to be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE that in support of the within motion In Touch Concepts, Inc., d/b/a Zcom shall rely upon: (i) the Declaration of Ravi Batra, Esq. dated January 21, 2014, along with all of its accompanying exhibits and materials incorporated therein by reference; (ii) the memorandum of law in support of the motion of In Touch Concepts, Inc., d/b/a Zcom; (iii) all materials, papers and proceedings under Docket No. 13 Civ. 1419 (PKC); (iv) all materials, papers and proceedings under Docket No. 13 Civ. 1418 (PKC); and, (v) all prior proceedings had in the within action in any venue, including the United States Court of Appeals for the Second Circuit, the United States District Courts for the Southern District of New York and the District of New Jersey; and, the Supreme Court of the State of New York, New York County.

PLEASE TAKE FURTHER NOTICE that pursuant to the briefing schedule Ordered by Hon. P. Kevin Castel, dated and entered as Docket Entry 110 on January 2, 2014, any opposition to this motion must be filed and served on or before January 31, 2014; and reply papers are to be filed and served on or before February 10, 2014.

Dated: January 21, 2014
New York, New York

Respectfully submitted,
THE LAW FIRM OF RAVI BATRA, P.C.
Attorneys for In Touch Concepts, Inc., d/b/a Zcom

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Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

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United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
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